

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL WILLIAM KOCH,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

ORDER

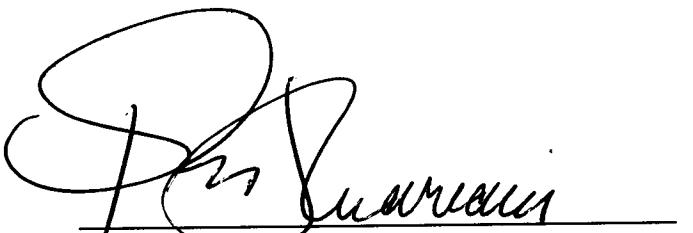
AND NOW, THIS 30 th DAY OF AUGUST, 2018, upon *de novo* review of Magistrate Judge Arbuckle's Report and Recommendation ("R&R") (Doc. 59), Defendants'

Objections thereto (Docs. 60, 61), and all other relevant documents, **IT IS HEREBY**

ORDERED THAT:

1. The R&R (Doc. 59) is **ADOPTED** for the reasons set forth therein.
2. Defendants' Objections (Docs. 60, 61) are **OVERRULED**. Defendants argue that the Magistrate Judge erred by not converting Defendants' motion to dismiss into one for summary judgment. (*Id.*). However, Defendants never requested that the Court consider converting their motion into one for summary judgment in their supporting brief or reply brief, and as Defendants admit, "it is within the Court's discretion to deny the motion [to dismiss] or to convert it" (Doc. 60, at 1; Doc. 61, at 4). Defendants cannot now take issue with a recommendation by the Magistrate Judge which did not anticipate a request that was not clearly articulated in their motion and briefs.

3. Defendants' Motion to Dismiss (Doc. 55) is **DENIED**.¹
4. The case is **REMANDED** to Magistrate Judge Arbuckle for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge

¹ Magistrate Judge Arbuckle acknowledged that Defendants "do raise a strong argument in regards to Plaintiff's failure to exhaust his administrative remedies", but properly noted that a ruling on this affirmative defense requires the Court to look beyond the Complaint and documents integral to, or explicitly relied upon, in the Complaint, which cannot be done on a motion to dismiss. (Doc. 59, at 7). Here, Defendants request that, should the Court adopt the R&R, "the Court limit discovery only as to the threshold issue of exhaustion." (Doc. 61, at 5). Although this request appears reasonable, particularly in light of the Magistrate Judge's aforementioned statement, this Court will leave such a decision to Magistrate Judge Arbuckle as proper pretrial management of this action is within his discretion.